



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

September 18, 1989

Marilyn Hawker, Chairman
Commission on Salaries for Elective
State Officers
Arizona Legislative Council
Legislative Services Wing
Suite 100, State Capitol
Phoenix, Arizona 85007-2899

Re: I89-080 (R89-097)

Dear Ms. Hawker:

You have asked whether language in A.R.S. § 41-1903(B) requiring the Commission on Salaries for Elective State Officers to submit its report and recommendations to the Governor no later than October 1 is mandatory or directory. We conclude that the statute is directory in the sense that any delinquent recommendations will not be illegal or void. We also conclude, however, that the October 1 deadline cannot be ignored.

You also have asked about legal consequences to the Commission or its members if the October 1 deadline is not met. We cannot at this time render an opinion on this question because such a determination involves factual questions of culpability.

The budget process is fragile. The Governor must rely on the recommendations of others to develop each budget proposal. The applicable statutes are designed to create a timetable which allows the Governor sufficient time to analyze recommendations before submitting the budget to the Legislature in January of each year. For example, each budget unit is required to submit its annual budget recommendations on September 1 of each preceding year, with an extra 45 days allowed if approved by the Department of Administration Finance Division. A.R.S. § 35-113.

The Commission on Salaries for Elective State Officers (Commission) plays an important and unique role in the budget process. It was created in 1970 by statute and constitutional

amendment to assist the Governor in developing appropriate salary recommendations for specified state officers.^{1/} A general outline of the procedure used for the establishment of salaries for elective state officers, and the Commission's role in that procedure, is set forth in Ariz. Const. art. 5, § 13. The Commission is to conduct a review of state officer's salaries and report its recommendations to the Governor. The timing of each review and recommendation is to occur as directed by the Legislature. The Governor then makes recommendations as to exact rates of pay for these officers to the Legislature, and the Governor's salary recommendations become effective unless within the time specified by law the Legislature disapproves or alters them.

A.R.S. §§ 41-1901 to -1904 detail the duties of the Commission and the timetable under which the Commission and the Governor must work to develop salary recommendations for submission to the Legislature. A.R.S. § 41-1903(A) provides that, beginning in 1985, the Commission shall biennially review the salaries for state officers. A.R.S. § 41-1903(B) provides:

The commission shall submit to the governor no later than October 1 a report of the results of each review conducted by the commission of the offices and positions subject to this chapter, together with its recommendations.

A.R.S. § 41-1904 provides that after receiving the Commission's report the Governor shall include in the next budget proposal the exact rates of pay recommended for the officers.^{2/}

^{1/}The commission is also required to certify to the Secretary of State its recommendations for the salary of legislators. These recommendations are to be submitted to the electors at the next general election. The October 1 deadline of A.R.S. § 41-1903(B) does not apply to these recommendations. See Ariz. Att'y Gen. Op. No. 77-141. Therefore, this letter does not address the Commission's duties regarding legislator salary recommendations.

^{2/}The Governor's budget proposal is to be transmitted annually to the Legislature no later than five days after the regular session of the legislature convenes. A.R.S. § 35-111 and -118.

These recommendations become effective on the first Monday of the January in the year following the Governor's recommendations, unless the Legislature acts to amend them within ninety days after the Governor's transmittal. A.R.S. § 41-1904(B).

This brings us to your first question. Is the language of A.R.S. § 41-1903(B), that "[t]he Commission shall submit to the Governor no later than October 1 [its] report," mandatory or directory?

The distinction between mandatory and directory statutes has been discussed by the Arizona Courts on several occasions. E.g., Arizona Downs v. Arizona Horsemen's Foundation, 130 Ariz. 550, 554-55, 637 P.2d 1053, 1057-58 (1981); Department of Revenue v. Southern Union Gas Company, 119 Ariz. 512, 513-15, 582 P.2d 158, 159-61 (1978); Valley Bank v. Malcolm, 23 Ariz. 395, 405, 204 P. 207, 211 (1922); Matter of Guardianship of Cruz, 154 Ariz. 184, 185-6, 741 P.2d 317, 318-19 (App. 1987); State v. Sanchez, 119 Ariz. 64, 68, 579 P.2d 568, 572 (App. 1978). In answering your question, however, we are primarily guided by the following discussion by the Arizona Supreme Court:

As a general proposition, statutes may be classified as either mandatory or directory. The word "mandatory" is defined as "containing a command." Black's Law Dictionary 1114 (4th ed. 1968). Black further states:

"A 'mandatory' provision in [a] statute is one the omission to follow which renders the proceeding to which it relates void * * *." Id.

"Directory" is defined by the same authority as:

"A provision in a statute * * * which is a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard * * *." Id. at 547.

In Commonwealth v. Kowell, 209 Pa.Super. 386, 228 A.2d 50, 52 (1967), the court quoted with approval from Pleasant Hills Borough v. Carroll, 182 Pa.Super. 102, 106-107, 125 A.2d 466, 469 (1956), as follows:

"To hold that a provision is directory rather than mandatory, does not mean it is optional-to be ignored at will. Both mandatory and directory provisions of the legislature are meant to be followed. It is only the effect of non-compliance that a distinction arises. A provision is mandatory when failure to follow it renders the proceeding to which it relates illegal and void; it is directory when the failure to follow it does not invalidate the proceedings."

.

The basic rule of statutory construction is for the court to ascertain the legislative intent. Mardian Constr. Co. v. Superior Court, 113 Ariz. 489, 557 P.2d 526 (1976). In arriving at the Legislature's intent, the effect and consequences of alternative constructions may be considered. See State v. Stockton, 85 Ariz. 153, 333 P.2d 735 (1958).

.

Language, mandatory in form, may be deemed directory when the legislative purpose can best be carried out by such construction. Valley Bank v. Malcolm, 23 Ariz. 395, 204 P.207 (1922).

Department of Revenue v. Southern Union Gas Company, 119 Ariz. at 513-14, 582 P.2d at 159-60.

In answering the present question, therefore, it is appropriate to focus on the effect on non-compliance by the Commission and the legislative purpose behind A.R.S. § 41-1903(B). If the October 1 deadline is mandatory, non-compliance would render any delinquent recommendations by the Commission illegal and void. The Commission's work would be wasted. We do not believe that this was the Legislature's intent in setting the October 1 deadline. The purpose behind establishment of the Commission was to create a non-partisan body to aid the Governor in producing responsible recommendations as to salaries for certain elected state

Marilyn Hawker, Chairman
189-080
Page 5

officers. This purpose would not be served if delinquent recommendations were void. Therefore, it is our opinion that the language of A.R.S. § 41-1903(B) is directory.

It is important to emphasize, however, that by using the words "shall" and "no later than," the Legislature clearly intended to place an obligation on the Commission to furnish its report to the Governor by October 1. As noted above, the Arizona Supreme Court has admonished public officials that legislative directives, be they mandatory or directory, cannot be ignored. That admonition applies here.

This brings us to your second question: whether there would be any legal consequences to the Commission or its members if the October 1 deadline is not met. In answer to this question, we refer you to A.R.S. § 38-443, prohibiting public officers from knowingly failing to perform their duties as required by law. However, an opinion on the actual sanctions which would flow from the Commission's failure to perform its duty necessarily involves factual determinations of culpability. The Attorney General is statutorily authorized to render opinions on questions of law. A.R.S. § 41-193(A)(7). We decline to render opinions as to matters which involve primarily factual determinations. Ariz. Att'y Gen. Op. No. 180-231. Such matters are more properly considered by the Attorney General if, or when, particular cases are referred to his office for investigation. Until then, we presume that state officials will perform their duties.

In conclusion, A.R.S. § 41-1903(B) requires the Commission to submit its recommendations to the Governor on or before October 1, 1989. However, the statute is directory in the sense that a failure to meet the deadline will not invalidate any subsequent recommendations by the Commission. We do not render an opinion on the sanctions that might arise if this deadline is not met because the imposition of sanctions involves factual questions of culpability.

Sincerely,



BOB CORBIN
Attorney General

BC:TED:jmc:bl